IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1204 of 1996

in

SPECIAL CIVIL APPLICATIONNo 2397 of 1993

with

LETTERS PATENT APPEAL NO.1302 OF 1996

in

SPECIAL CIVIL APPLICATION NO.2397 OF 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRUPTI RAMANLAL DAVE

Versus

CENTRAL EXCISE & CUSTOMS DEPTT

Appearance:

MR MB GANDHI for Appellant

MR JAYANT PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE
Date of decision: 25/10/1999

ORAL JUDGEMENT (Per Panchal, J.)

#. Both these appeals, which are instituted under Clause 15 of the Letters Patent, are directed against judgment dated August 21, 1996, rendered by the learned Single Judge in Special Civil Application No.2397 of 1993. As the appeals involve determination of common questions of fact as well as law, we propose to dispose them of by this common judgment.

#. The appellant in Letters Patent Appeal No.1204 of 1996 is the owner of property bearing Block No.1 situated in the building known as 'Stadium House', located at Navrangpura, Ahmedabad. This property was let out to original respondent No.2 for the use of respondent No.1 by lease deed dated June 15, 1975 at the rate of Rs.1.25 per sq. ft. The area let out to original respondent No.2 admeasures 93.40 sq. metres. It may be mentioned that the Directorate of Estates, Government of India, had issued an office memorandum dated July 10, 1972 regarding reassessment of reasonable rent of private buildings leased out to Government. Paragraph 3 of the said office memorandum provided that in case of lease on month to month or year to year basis, the landlord could not increase the rent while the lease subsisted. It was stated therein that after the expiry of the period of lease, the landlord might terminate the lease or extend it on the terms mutually agreed upon. Insofar as the quantum of rent is concerned, it was mentioned in paragraph 5 of the said office memorandum that rents which might have been once assessed as reasonable should not be enhanced even by mutual agreement unless, inter alia, certain circumstances had arisen subsequent to the initial hiring of the building justifying such a revision. According to the memorandum, those circumstances were (1) the landlord had carried out alteration/addition to the building thereby increasing its effective utilizable area; (2) the landlord had subsequently, i.e. after the building had been initially hired, provided additional facilities/amenities in the building such as additional fans, geysers, bath rooms, additional electric appliances, etc.; (3) property and house tax had been increased by the local authorities proportionately reasonable; (4) some new element of tax such as Education Cess had been imposed by the State/local authorities as the case might be; and (5) increase in rent was necessitated as per the Rent Control Order existing in the town/city concerned. The first lease expired on June 14, 1980 and, therefore, the

original petitioner by notice dated September 1, 1981, called upon the Assistant Collector of Central Excise, Division-III to hand over possession of the premises or execute a valid lease deed from June, 15, 1980 onwards at the rate of Rs.6 per sq. ft. excluding all the taxes, cess, etc. A copy of the notice dated September 21, 1981 is produced on the record of the case. Meanwhile another office memorandum dated September 21, 1982 came to be issued by Directorate of Estates, Government of India, mentioning, inter alia, that Office Memorandum dated July 10, 1972 stands partially modified and that rent can be reassessed on expiry of period of five years from the date of original assessment and after every five years thereafter. No steps were taken by the Department to get the rent revised in terms of office memorandum dated September 1, 1982. Adjoining to the property of the original petitioner, there is another property known as Block No.B of Stadium House, which is of the ownership of Nirmal Land Corporation. The said property is in possession of Department Foreign Exchange Regulation (Enforcement Directorate) and the original petitioner in this petition is one of the co-owners of the said property. The original petitioner came to know that for that property, the department had called for assessment of rent from CPWD in the year 1983 and the rent was revised at the rate of Rs.3 per sq. metre on the basis of certificate issued by CPWD. So far as premises which are subject matter of the appeals are concerned, the original petitioner made application dated May 25, 1987 requesting the department to first make reassessment of the rental value for a period from 1987 to 1992 after obtaining necessary certificate from CPWD. It is an admitted position that no steps were taken by the Department for the purpose of revision of rent. However, after a long span, a certificate dated September 9, 1988 was issued by CPWD and the reasonable rent of the premises was fixed at Rs.53.82 ps. per square metre per month. In view of the contents of the said certificate, the original petitioner was to be granted increase in rent from September 1, 1987, but no increase in rent was granted for the earlier period. Under the circumstances, the petitioner, i.e. the owner of the property, instituted Special Civil Application No.2397 of 1993 and prayed the Court to issue a writ of mandamus directing the respondents to approach CPWD for reassessment of the rent of the property bearing Block No.1 situated in Stadium House, Navrangpura, Ahmedabad for the period from 1982 to August 31, 1987 and to pay the reasonable market rent assessed by the CPWD. The petitioner also prayed that writ of mandamus be issued directing the respondents to execute a lease deed with effect from September 1,

1987 and to make payment of the rent at the revised rate of Rs.5027/- per month. A further prayer was made to direct the respondents to pay difference of Rs.2,77,948/together with interest at the rate of 18% per annum with effect from September 1, 1982 till the date of payment, as demanded in letter dated September 21, 1981. It was also prayed to direct the respondents to reassess rent or to get it reassessed through CPWD on the basis of the petitioner's application for the period from 1982 to 1987 and to make the payment according to the new assessment from September 1, 1992 till the expiration of five years and also to execute new standard lease agreement for the said period.

#. On service of notice, an affidavit in reply was filed by Assistant Collector, Central Excise, Division-III, Ahmedabad, controverting the averments made in the petition. It was claimed therein that the lease agreement entered into by the petitioners had come to an end on June 15, 1980 and as the same was not renewed, the department had become statutory tenant and relations between the parties were governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as a result of which the petition should not be entertained and the petitioner should be asked to resort to alternative remedy available under the said Act. It was mentioned in the reply that Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 bars the jurisdiction of other Courts to entertain and try any proceedings between the landlord and the tenant relating to the recovery of rent and, therefore, petition under Article 226 of the Constitution was not maintainable. What was stressed was that the petitioner had refused to renew the lease deed by letter dated September 17, 1981 and, therefore, the petitioner was not entitled to the reliefs claimed in the petition. It was also averred in the reply that the claim regarding enhancement of rent for the period from 1982 to 1987 was barred by principles of delay and laches and, therefore, the petition should be rejected. By filing the reply, the deponent of the affidavit in reply had demanded dismissal of the petition.

#. An affidavit in rejoinder was filed by Ramanlal S. Dave, power of attorney holder of the original petitioner denying the averments made in the affidavit in reply and reiterating what was stated in the petition.

#. After hearing the parties, the learned Single Judge has directed the department to consider and pass an appropriate order for the payment of arrears of rent, if

any due, for the period from September 1, 1982 to August 31, 1987 on the basis of average rent at Rs.3049/- per month by the impugned judgment giving rise to Letters Patent Appeal No.1302 of 1996 by the department. The original petitioner has filed Letters Patent Appeal No.1204 of 1996 challenging that part of the order of the learned Single Judge by which prayer made by the original petitioner to direct the respondents, i.e. the department, to pay arrears of rent from 1.9.1982 to 31.8.1987 with interest is rejected.

#. We have heard learned counsel for the parties at length. The submission that the claim for rent from September 1, 1982 to August 31, 1987 is barred by principles of delay and laches and, therefore, the impugned judgment should be set aside has no merits. Though the power under Article 226 to issue an appropriate writ is discretionary and inordinate delay in making the motion for a writ may be adequate ground for refusing to exercise the discretion, it is well settled that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and question of exercise of discretion has to be decided in view of the facts of each case. It is relevant to notice that the revision of rent was dependent on the assessment which was to be made by CPWD and CPWD made the assessment for the first time on October 24, 1994. Though the original petitioner had made application dated September 21, 1981, requesting the department to revise the rent as per office memorandum of 1972, no action at all was taken by the department in terms of the said office memorandum. Thereafter, office memorandum dated September 1, 1982 was issued by Directorate of Estates, Government of India, directing the departments concerned to revise the rent on fulfilment of certain conditions. Even thereafter also, no steps were taken by the department either to revise the rent or to get reasonable rent assessed by CPWD. The CPWD assessed the rent for the first time on October 24, 1994, i.e. after filing of the petition. Under the circumstances, it cannot be said that there was any delay on the part of the original petitioner in approaching the Court. The learned Single Judge while dealing with the submission advanced by the learned Additional Central Government Standing Counsel regarding delay and laches in filing the petition has adverted to several reported decision of the Supreme Court on the point and held that there is no justification in refusing relief of reasonable rent to the original petitioner on the basis of certificate which was issued in the year 1994 for the

period from 1982 to 1987. We are in complete agreement with the view expressed by the learned Single Judge and we hold that the learned Single Judge was justified in entertaining the prayer made by the petitioner for refusing the rent for the period from September 1, 1982 to August 31, 1987.

#. The contention that the High Court had no jurisdiction to entertain the petition under Article 226 of the Constitution in view of the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, cannot be accepted. Article 226 not being one of those provisions of the Constitution which may be changed by ordinary legislation, the powers under Article 226 cannot be taken away or curtailed by any legislation short of amendment of the Constitution. It is well settled the even where a statutory provision bars the jurisdiction of Courts, generally, it will not bar the jurisdiction of the High Court under Article 226. Having regard to the facts of the case, it cannot be said that there was inherent lack of jurisdiction in entertaining petition filed by the petitioner under Article 226 of the Constitution and, therefore, the plea that the impugned judgment should be set aside as the High Court had no jurisdiction to entertain the petition under Article 226 will have to be rejected and is hereby rejected.

#. The plea that in view of the alternative remedy available under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the petition should not have been entertained and the petitioner should have been relegated to the alternative remedy available to him under the said Act also cannot be accepted at this stage. It may be stated that another owner of the premises had filed Special Civil Application No.6435 of 1991 claiming similar such relief and therein notice was ordered to be issued to the respondents, i.e. the department, at the admission stage. The department had filed reply contesting the petition, inter alia, on the ground that alternative remedy was available under the Rent Act and, therefore, the petition should not be entertained. However, after hearing the learned counsel for the parties at length, the learned Single Judge had thought it fit to issue Rule and had entertained the petition. Thereafter, Special Civil Application No.2397 of 1993, out of which Letters Patent Appeal No.1302 of 1996 arises, was placed for admission hearing and as petition involving similar question was admitted earlier, this petition was also admitted and Rule was issued therein. It is well settled that once the petition is

admitted, it should not be rejected on the ground that alternative remedy is available to the petitioner (see Hirday Narain v. Income Tax Officer, Bareilly, AIR 1971 SC 33, paragraph 12). The petition filed by the original petitioner was not only entertained by the learned Single Judge, but was heard on merits of the case. Moreover, with reference to Special Civil Application No. 2398 of 1993 the Enforcement Directorate had addressed a letter dated March 19, 1996 to the learned Additional Central Government Standing Counsel and requested him to bring to the notice of the Court instructions contained in the said letter. By the said letter, the department had shown its readiness and willingness to pay rent based on recognized principle of valuation as per the Government's usual practice in this regard, i.e. Rs.6600/- per month with effect from June 13, 1987 and Rs.12,440/- per month with effect from June 13, 1992 and had left the matter specifically to the decision of the High Court. When the department had agreed to pay revised rent on the basis of recognized principle of valuation from June 13, 1987 and subsequently from June 13, 1992, it would have been unreasonable to relegate the original petitioner to alternative remedy available to him under the Rent Act for the purpose of revision of rent from September 1, 1982 to August 31, 1987. Having regard to all these circumstances, we are of the opinion that no error was committed by the learned Single Judge in entertaining the petition on merits, though plea that alternative remedy was available under the Rent Act was raised by the appellants.

#. The argument that determination of average rent at the rate of Rs.3049/- per month for the period from September 1, 1982 to August 31, 1987 is unreasonable has no merits at all. The learned Single Judge has given reasons as to why average of the two figures mentioned in the certificate should be adopted while determining rent for the period from September 1, 1982 to August 31, 1987. These reasons are to be found in paragraph 10 of the impugned judgment. In view of the contents of certificate dated October 27, 1994 issued by the CPWD, it cannot be said that the method for determining rent adopted by the learned Single Judge and assessment of the rent at the rate of Rs.3049/per month for the period from September 1, 1982 to August 31, 1987 is unreasonable at all so as to warrant interference of this Court in the present appeal. We may state that pursuant to different interim directions, enhanced rent was paid to the original petitioner and, therefore, a just direction has been given by the learned Single Judge to the effect that if any amount has been paid in excess to the original

petitioner, the same should be adjusted against the rent of the subsequent years on the basis of average rent of the premises as Rs.3049/- for the period from September 1, 1982 to August 31, 1987. Therefore, the finding recorded by the learned Single Judge that average rent of the premises is Rs.3049/- per month for the period from September 1, 1982 to August 31, 1987, being just and reasonable, is hereby upheld.

##. Thus, we do no find any substance in any of the contentions urged on behalf of the appellants in Letters Patent Appeal No.1302 of 1996 and the same is liable to be dismissed.

##. So far as appeal filed by the owner of the property claiming interest on arrears of rent is concerned, we find that the learned Single Judge has exercised discretion of not granting interest to the owner of the property for arrears of rent. The exercise of the discretion cannot be said to be unreasonable or arbitrary so as to warrant interference by this Court in the appeal. In fact, the department could not pay the revised amount of rent because of non-availability of certificate from CPWD for which the department cannot be penalized. Having regard to the fair stand which was taken by the department, as is reflected in its letter dated March 19, 1996, we are of the opinion that the learned Single Judge was justified in not entertaining the prayer made by the owner of the property to direct the respondents to pay arrears of rent with interest. On overall view of the matter, we do not think that any error is committed by the learned Single Judge in not awarding interest to the owner of the property so far as arrears of rent are concerned. Under the circumstances, Letters Patent Appeal No.1204 of 1996 filed by the owner of the property claiming interest is also liable to be dismissed.

##. For the foregoing reasons, both the appeals fail and are dismissed with no orders as to costs.

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